IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5598 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SRIVEN MULTI TECH LTD.

Versus

STATE OF GUJARAT

Appearance:

MR SN SOPARKAR for Petitioners

Mr.S.P. Dave, A.P.P. for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/02/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. S.N. Sorparkar for the petitioner and learned A.P.P. Mr. S.P. Dave for the respondent no.1-State. The respondent no.2 is

absent; though served.

1. The petitioners nos.1 and 2 both are Limited Companies registered under the provisions of Indian Companies Act, 1956 while the petitioners nos.3 and 4 are the Chairman/ Managing Director and Executive Director respectively of the petitioner no.1-Company. The petitioners have prayed to quash and set aside the process issued against the petitioners by the Court of 4th J.M.F.C., Junagadh in Criminal Case no.325/2000 filed by the respondent no.2-Shri Rajendra A. Ghelani and have also prayed to quash the said complaint.

2. The respondent no.2 has filed Criminal Case no.325/2000 against the present petitioners on 13-1-2000 in the Court of Chief Judicial Magistrate, Junagadh for the offences made punishable under Sec.629(A) of the Companies Act, 1956 on the allegations that complainant alongwith his father and mother applied and were allotted 1000 shares each in public issue offered by the accused no.2-Company(petitioner no.2). That the complainant as well as his father and mother each have paid Rs.5000/- on each application and that the accused no.2(petitioner no.2) has allotted one thousand shares partly paid up to complainant as well as to his father and mother each in 1996. The details of the said shares are enumerated by the complainant in paragraph 3 of the complaint. It is alleged by the respondent no.2 as complainant in the complaint that in October 1999, the complainant came to know that there was some fishy affairs of the accused nos.1 and 2 Companies and that the accused no.1-Company has either taken over the accused no.2 Company or the name is changed to accused no.1-Company. That the complainant however came to know that his own shares and that of his parents have already been forfeited in the beginning of the year 1999 by cheating and fabricating false evidence in the record of the Company and without giving any statutory notice or any notice of forfeiture. That on enquiry through friends, the complainant came to know that no satisfactory reply was being given by the accused. It is also alleged that the accused nos.1 and 2 without giving any notice for payment of call money or any notice of forfeiture to the complainant and/or to his parents have forfeited the shares allotted to the complainant and his parents and thereby have committed the offence as alleged in the complaint.

3. The complainant has stated in paragraph 10 that notice of payment of call money was to be served by the accused to the complainant and his parents at Junagadh

and also the notice of forfeiture was required to be served to the complainant and his parents at Junagadh. That the complainant and his parents have suffered wrongful loss at Junagadh on account of alleged criminal acts on the part of the accused, and as such, the Court at Junagadh has jurisdiction to hear and decide the complaint.

4. The petitioners have challenged the validity of the complaint on numerous grounds,and particularly, the territorial jurisdiction of the Court at Junagadh as elected by the respondent no.2 as the complainant.

It may be noted that initially vide order dated 27-9-2000, rule was issued, however, the respondent no.2 though served duly has failed to appear and has failed to file any affidavit-in-reply.

5. It is undisputed that the Registered Office of the accused nos.1 and 2 in respect to Criminal Case no.325/2000 filed in the Court of 4th J.M.F.C., Junagadh are situated at Hyderabad, Andhra Pradesh. That under Sec.53 (2) of the Companies Act, 1956 where a document to be served on a member is to be sent by post such service thereof shall be deemed to be effected by properly addressing, prepaying and posting the letter containing the document. Hence, there is a statutory mode for delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory obligation and it would stand discharged as soon as the document is posted. That thereby, the cause of action for default of not sending the document would arise at the place where the Registered Office of the Company is situated on account of the place from where document has to be posted usually and there could not be a question of cause of action having arisen where member was to receive the postal delivery.

That in the matter of H.P.GUPTA VS. HIRALAL {1970} 1 SCC 437, the Apex Court considered similar provision of Sec.205(5)(b) and held that when the Company posts the dividend warrant at the Registered Office of the shareholder, the post office becomes the agent of the shareholder and the loss of the dividend warrant during the transit thereafter is at the risk of the shareholder. The Court further held that the place where the dividend warrant would be posted is the place where the Company has its Registered Office and the offence under Sec.207 of the Companies Act would also occur at the place where the failure to discharge the obligation arises, namely,

the failure to post the dividend warrant within a stipulated period.

That the following observations made by the Court in the facts of the said case being relevant and material are extracted hereunder:

> "... The venue of the offence, therefore, would be Delhi and not Meerut, and the Court competent to try the offence would be that Court within whose jurisdiction the offence takes place, i.e., Delhi. This should be so both in law and commonsense, for, if held otherwise, the Directors of Companies can be prosecuted at hundreds of places on an allegation by shareholders that they have not received the warrant. That cannot be the intention of the Legislature when it enacted Section 207 and made failure to pay or post a dividend warrant within 42 days from the declaration of the dividend an offence."

That in the matter of H.V.JAYARAM V. INDUSTRIAL CREDIT & INVESTMENT CORPORATION OF INDIA LTD. AND OTHERS, reported vide 2000 - (036)-CLA-0001-SC, the Apex Court approved and reiterated the above stated proposition in paragraph 11 of the report.

6. That in the instant case, in absence of any affidavit-in-reply and considering the facts and circumstances of the case as apparent from the material produced on record in the context of above stated dicta of Apex Court, it has to be held that the learned J.M.F.C., has erred in taking cognizance of the complaint without considering or deciding the issue regarding territorial jurisdiction. That under Sec.201 of the Code of Criminal Procedure, 1973 (" Code" for short), the learned J.M.F.C., ought to have returned the complaint to the complainant for presentation before the appropriate Court with an appropriate endorsement thereon.

On the basis of the foregoing discussion, following operative orders are passed:

OPERATIVE ORDERS:

The petition is partly allowed.

(i) The Court of the 4th J.M.F.C., Junagadh is directed to return the original complaint of Criminal Case no.325/2000 to the complainant with

appropriate endorsement as required under Sec.201 of the Code for presentation to the proper Court which would be an appropriate Court at Hyderabad in Andhra Pradesh.

Interim relief granted vide earlier order dated 27-9-2000 is hereby vacated.

Rule to the aforesaid extent is made absolute.

(A.K.Trivedi,J.)

stanley-akt.